IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3749 OF 2006
(For Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Applicant
Vs.
Sattar Usman Shaikh and 2 ors. ..Respondents

Ms. Usha V. Kejriwal, APP for applicant.

CORAM: B.H. MARLAPALLE & R.S. MOHITE,JJ.

Date : March 05, 2007.

P.C.:

1. Heard Ms. Kejriwal, the learned APP. This is an application filed by the State seeking leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal passed by the learned Sessions Judge, Satara on 29/6/2006 in Sessions Case No.50 of 2005. The present respondents were put on trial as accused nos.1 to 3 for the offences punishable under Sections 302 and 498-A read with Section 34 of IPC on the allegations that they ill-treated the deceased Farjana, the wife of accused no.2 and they caused her death by pouring kerosene on her person and

subsequently setting her on fire on 10/12/2004.

2. The prosecution had examined the complainant PW 1 Abdul Shaikh, the father of the deceased, PW 5 Nasim Shaikh, the mother of the deceased, PW 6 Prakash Pawar, Special Executive Magistrate who had recorded dying declarations on two different occasions on 11/12/2004 and PW 7 Ashok Jambhale, the I.O. The prosecution placed on record in all four written dying declarations and two of them i.e. At Exhs.46/39 and Exh.47 were recorded by PW 6. In Exh.46, which was recorded in the night between 10 p.m. to 10.45 p.m., for the first time it was alleged that she was set on fire by the accused after pouring kerosene on her person. Exh.47 was recorded by PW 6 himself on requisition at Exh.44 and the same was recorded in the wee hours of 11/12/2004 (between 1.30 to 2.00 hrs.) and in the same the deceased is alleged to have stated that she received the burn injuries accidentally, namely, on account of the kerosene stove getting burst while it was burning. To the same effect there is another dying declaration at Exh.71 recorded by the ASI while on duty in the hospital where the deceased

was first admitted and though it has the endorsement of the Medical Officer on duty, it is not known at what point of time it was recorded. PW 7 in his cross-examination was questioned on Exh.71 and though he agreed that it was recorded by the ASI on duty in the hospital, he could not state the name of the said ASI and could not indicate the time when it was recorded. The third dying declaration is at Exh.61 which again states the story of accidental death. This is recorded by another Special Executive Magistrate, namely, Shri R.D. Dhone at about 4 p.m. on 11/12/2004. PW 7 Ashok, the I.O., clearly admitted that all these dying declarations were recorded by the Special Executive Magistrates on specific requisitions having been issued by him and the only last dying declaration at Exh.46/39 as recorded at 10 p.m. on 11/12/2004 implicated the accused.

3. On the other hand the FIR at Exh.16 recorded as per the complaint filed by PW 1 gives the story of suicide, whereas PW 5 Nasim, when she was in the witness box before the trial court, claimed that an oral dying declaration was made to her by the deceased

and as per the same the accused sprinkled kerosene on her person first and subsequently one of them lit the matchstick. Thus there is a contradiction between the evidence of PW 1, the father of the deceased and PW 5, the mother of the deceased. On the face of these multiple dying declarations and that too contradicting with each other, the trial court held that none of them were liable and, therefore, passed the impugned acquittal order. We do not find any error committed by the trial court in appreciating the evidence placed before it by the prosecution and, therefore, there is no case made out for our reconsiderations.

4. Hence, leave to appeal is hereby refused and the application is rejected.

(R.S. Mohite, J.) **(B.H. Marlapalle,J.)**